

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
LEVEL 3 COMMUNICATIONS LLC)	WC Docket No. 03-266
)	
Petition for Forbearance Under)	
47 U.S.C. § 160(c) from Enforcement)	
of 47 U.S.C. § 251(g), Rule 51.701(b)(1),)	
and Rule 69.5(b))	

**REPLY COMMENTS OF THE
SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION**

The South Dakota Telecommunications Association (SDTA),¹ hereby submits reply comments in connection with the Petition for Forbearance² filed by Level 3 Communications LLC (Level 3). SDTA supports the comments of various parties that oppose Level 3’s request for forbearance as discussed below.

In the Petition for Forbearance, Level 3 asks the Commission to forbear from enforcing its statute and rules to the extent that they could result in “the imposition of interstate or intrastate switched access charges” on Internet Protocol (IP) - Public Switched Telephone Network (PSTN) voice communications and on certain PSTN-PSTN traffic that is incidental thereto.³ A number of parties rightly oppose Level 3’s request, and the Commission should deny

¹ SDTA is an association of 30 independent, cooperative and municipal incumbent local exchange carriers (LECs) serving rural areas in South Dakota.

² Petition for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b) (Petition for Forbearance).

³ Petition for Forbearance at 1.

it, because access charges clearly apply to Level 3's service and Level 3 has not satisfied the statutory test for forbearance.⁴

By its own admission, Level 3's voice services use the PSTN, and such services are subject to access charges under the Commission's existing rules. Moreover, Level 3's voice services do not fall within the scope of the Commission's narrow exemption from access charges for enhanced service providers (ISPs). As demonstrated by Verizon, the Commission's ISP exemption "applies only to exempt from access charges the situation in which an ISP allows its subscribers to obtain access to the ISP's own information services"⁵ and not in the case, like Level 3's service, where the ISP uses the PSTN "in a manner analogous to IXC's."⁶ Therefore, it is clear that under current rules, Level 3's voice services are subject to access charges.

Moreover, Level 3 has not met its burden for regulatory forbearance.⁷ The Commission may forbear from the regulation of telecommunications carriers or services if it determines that 1) regulation is not necessary to achieve just and reasonable rates; 2) regulation is not necessary for the protection of consumers; and 3) forbearance is consistent with the public interest.⁸ As

⁴ Although SDTA supports the Comments of the Verizon Telephone Companies as discussed herein, SDTA opposes Verizon's request that the Commission declare all VoIP services to be interstate in nature and subject to the Commission's exclusive jurisdiction. SDTA believes that this issue should be considered in the Commission's pending rulemaking proceeding on Internet protocol-enabled services (WC Docket No. 04-36).

⁵ Comments of the Verizon Telephone Companies at 10.

⁶ *Id.*, citing Brief for the FCC at 75-76, *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1997) (No. 97-2618) and First Report and Order, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, 12 FCC Rcd 15982, ¶345 (1997), *petitions for review denied*, *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

⁷ See, National Telecommunications Cooperative Association Initial Comments at 3-4 (NTCA Comments); Joint Comments of the Independent Telephone & Telecommunications Alliance, National Exchange Carrier Association, Inc., Organization for the Promotion and Advancement of Small Telecommunications Companies, and United States Telecom Association at 2-5 (Joint Comments); and Comments of the Verizon Telephone Companies at 11-19.

⁸ 47 U.S.C. § 159(10)(a)(3).

demonstrated by various commenters, grant of the Petition for Forbearance essentially would give Level 3 and other VoIP providers “a free ride from paying access charges,”⁹ which are an essential element of cost recovery for local exchange carriers (LECs). Ultimately, the costs not paid by VoIP providers would be passed on to other interexchange carriers and LEC customers.¹⁰ This would harm consumers through higher rates and harm competition by conferring a competitive advantage to Level 3 and other VoIP providers.

Level 3 attempts to downplay these harmful effects by suggesting that the impact of lost access charge revenues will be insubstantial. This simply is not correct. As an initial matter, it is not at all certain that Level 3 is correct when it asserts that by 2006, VoIP communications will constitute only 4% of circuit-switched national and international long distance revenue. In fact, as demonstrated by Verizon, some analysts are projecting much more significant levels of VoIP penetration.¹¹

More importantly, the harmful affect of a reduction in access charge revenues is likely to have a disproportionate negative impact on rural carriers. Because of their size and the nature of their service territories, rural LECs are less able to withstand significant changes in revenues. This, coupled with the fact that rural LECs recover a very significant portion of their revenue requirement through access charges, means that any reduction in access charge revenues will adversely impact rural LECs and their customers and could result in significant rate increases. Accordingly, Level 3’s Petition for Forbearance is not in the public interest and it should be denied.

⁹ NTCA Comments at 3.

¹⁰ Comments of the Verizon Telephone Companies at 15; Joint Comments at 3.

¹¹ Comments of the Verizon Telephone Companies at 12-13.

Finally, there is no rational basis to grant Level 3's request to forbear from enforcing the access charge rules for rural LECs that have lost the rural exemption pursuant to Section 251(c) of the Communications Act of 1934, as amended. As demonstrated in the Joint Comments, there is no connection between the rural exemption and access charges and, even in areas where the rural exemption has been lifted, LECs are entitled to assess and receive access charges for the services they provide.¹² Accordingly, this aspect of Level 3's Petition for Forbearance also should be denied.

Based on the foregoing, SDTA requests that the Commission deny Level 3's Petition for Forbearance in its entirety.

Respectfully submitted,

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¹² Joint Comments at 5-6.

CERTIFICATE OF SERVICE

I, Kelly Laraia, hereby certify that copies of the foregoing Reply Comments Of The South Dakota Telecommunications Association were served by first class U.S. mail, hand delivery* or e-mail** on this 31st day of March, 2004 to the persons listed below:

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